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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

CHRISTOPHER ROBERT DANCEL,

Defendant and Appellant.

A146010

(San Mateo County  
Super. Ct. No. SC80305)

A jury concluded that on the evening of May 24, 2013, defendant Christopher Robert Dancel was transporting and possessing methamphetamine for sale (Health & Saf. Code, §§ 11378, 11379, subd. (a)); being under the influence of that substance (Health & Saf. Code, § 11550, subd. (a)); and operating a motor vehicle while being under the influence of that substance and personally causing great bodily injury to Juan Antonio Cardenas. (Veh. Code, § 23153, subd. (a); Pen. Code, § 12022.7, subd. (a).) Defendant does not dispute any aspect of his convictions for these offenses.

Paralleling the governing statutory language, the jury further concluded that on that same date defendant was “guilty, of the crime of killing Juan Antonio Cardenas, a human being, without malice aforethought, in the driving of a vehicle while under the influence of a drug and the killing was the proximate result of the commission of an unlawful act, not amounting to a felony and without gross negligence in violation of Penal Code section 191.5[, subdivision (b)].”

The jury was instructed with CALCRIM No. 591 that “To prove that the defendant is guilty of vehicular manslaughter with ordinary negligence while intoxicated, the

People must prove that: [¶] 1. The defendant drove under the influence of a drug. [¶] 2. While driving that vehicle under the influence of a drug, the defendant also committed an infraction. [¶] 3. The defendant committed the infraction with ordinary negligence; AND [¶] 4. The defendant's negligent conduct caused the death of another person." The specified infraction was defendant failing to yield to a pedestrian in a crosswalk. (Veh. Code, § 21950, subd. (a).)

The jury was also instructed that CALCRIM No. 2100 "tells you what the People must prove in order to prove that the defendant drove under the influence of a drug," namely: "A person is under the influence if, as a result of taking a drug, his mental or physical abilities are so impaired that he is no longer able to drive a vehicle with the caution of a sober person, using ordinary care, under similar circumstances." CALCRIM No. 2100 further instructed the jury: "A drug is a substance or combination of substances, other than alcohol, that could so affect the nervous system, brain, or muscles of a person that it would appreciably impair his ability to drive a vehicle as an ordinarily cautious person, in full possession of his or her faculties and using reasonable care, would drive a vehicle under similar circumstances."

Defendant does not dispute that the jury had sufficient information to determine that methamphetamine is a drug that *could* impair his ability to operate a motor vehicle. Nor does he dispute "there was ample evidence that [he] had used methamphetamine" shortly before Mr. Cardenas's death. What defendant does dispute is that being under the influence necessarily means being impaired. In his words: "It is not enough that the drug *could* impair an individual's driving ability or that the person is under the influence to some detectable degree. Rather, the drug must *actually impair* the individual's driving ability." Based on that, defendant's sole contention is that there is no substantial evidence from which the jury could legitimately conclude that he was actually impaired when he killed Juan Antonio Cardenas while operating a motor vehicle on the evening of May 24, 2013.

We examine the merits of defendant's contention according to well-established principles governing our review. "To assess the evidence's sufficiency, we review the

whole record to determine whether *any* rational trier of fact could have found the essential elements of the crime . . . beyond a reasonable doubt. . . . In applying this test, we review the evidence in the light most favorable to the prosecution and presume in support of the judgment the existence of every fact the [trier of fact] could reasonably have deduced from the evidence. [Citation.] ‘Conflicts and even testimony [that] is subject to justifiable suspicion do not justify the reversal of a judgment, for it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends. . . .’ [Citation.] A reversal for insufficient evidence ‘is unwarranted unless it appears “that upon no hypothesis whatever is there sufficient substantial evidence to support” ’ the [trier of fact’s decision.] [Citation.] [¶] The same standard governs in cases where the prosecution relies primarily on circumstantial evidence. [Citation.] We ‘must accept logical inferences that the jury might have drawn from the circumstantial evidence. [Citation.]’ [Citation.] ‘Although it is the jury’s duty to acquit a defendant if it finds the circumstantial evidence susceptible of two reasonable interpretations, one of which suggests guilt and the other innocence, it is the jury, not the appellate court that must be convinced of the defendant’s guilt beyond a reasonable doubt. [Citation.]’ [Citation.] Where the circumstances reasonably justify the trier of fact’s findings, a reviewing court’s conclusion the circumstances might also reasonably be reconciled with a contrary finding does not warrant the judgment’s reversal.” (*People v. Zamudio* (2008) 43 Cal.4th 327, 357–358.)

“Circumstantial evidence is legal evidence and may be as conclusive in its convincing force as the testimony of direct witnesses to the overt act. Circumstances very largely control the conduct of men in the most important affairs of life and may be sufficient to justify a conviction of crime where they are such as to exclude any other reasonable theory than that of the guilt of the accused.” (*People v. Nagy* (1926) 199 Cal. 235, 236–237; accord, *People v. Alcalde* (1944) 24 Cal.2d 177, 184.) “ ‘[C]ircumstantial evidence is as sufficient as direct evidence to support a conviction.’ ” (*People v. Nguyen* (2015) 61 Cal.4th 1015, 1055.)

One way to view the evidence is as a battle of experts, for the defense expert on the effects of methamphetamine use opposed two prosecution experts on the same subject. The testimony of the prosecution's first expert, toxicologist Bill Posey, would support the conclusion that defendant's ability to operate a motor vehicle at the time of Cardenas's death was impaired by his consumption of methamphetamine. The defense expert, pharmacologist Dr. Alan Donelson, spent considerable time disputing the methodology used by Posey. Donelson initially concluded that, "based on the science" "[t]here's not enough certainty about the role of methamphetamine" to decide whether the undoubted level of methamphetamine in defendant's system played a causative role in Cardenas's death. Later, Donelson testified that he was 95 percent sure that defendant was not impaired.

The prosecution also produced Daly City Police Officer Rosina Kimball, who was accepted as an expert in the two subjects identifying persons who are under the influence, and "determining someone's ability to safely operate a car." Approximately four hours after the death of Mr. Cardenas, Kimball spoke with defendant and administered a series of tests to him. The officer's expert opinion was that defendant was methamphetamine-impaired in his ability to operate a motor vehicle at the time Mr. Cardenas was killed.

We must accept that the jury found the testimony of the prosecution's experts to be the more credible. The presence of prosecution expert testimony on the issue of impairment immediately distinguishes this case from *People v. Torres* (2009) 173 Cal.App.4th 977, 983, and *People v. Davis* (1969) 270 Cal.App.2d 197, 200, upon which defendant relies. Each of those experts' testimony is substantial evidence. (Evid. Code, § 411; *People v. Christensen* (2014) 229 Cal.App.4th 781, 795; *People v. Benner* (2010) 185 Cal.App.4th 791, 795–796.) But there is more.

The defense expert testified that to determine impairment, "[y]ou have to look at all the circumstances; the totality of evidence." Very well. Mr. Cardenas died as a result of being struck by the vehicle defendant was driving. The victim, who was 63 years old, was carrying a bag of fruit. He was part way through a clearly marked crosswalk that did not have a stop sign or stop light, but it did have clearly posted pedestrian crossing

warnings. The posted speed limit was 25 miles per hour. Although it was night, the crosswalk was illuminated by working street lights, making Mr. Cardenas clearly visible to nearby observers. Defendant drove through the crosswalk going faster than the posted speed—indeed, past a vehicle that was stopped for Mr. Cardenas. There was no evidence that he slowed, attempted to brake, or tried to avoid hitting Mr. Cardenas. By defendant's own admission, his vision was unimpaired.

From this the jury could conclude that defendant was impaired when he drove at an excessive rate of speed and made no attempt to avoid hitting a clearly visible pedestrian in a lighted crosswalk, that is, in the language of CALCRIM No. 2100, defendant was unable "to drive a vehicle with the caution of a sober person, using ordinary care, under similar circumstances." When this circumstantial evidence is considered with the expert testimony, we have no hesitation in concluding the record contains ample, if not abundant, substantial evidence that defendant's ability to operate a motor vehicle was impaired when he killed Juan Antonio Cardenas on the evening of May 24, 2013.

The judgment of conviction is affirmed.

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Richman, Acting P.J.

We concur:

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Stewart, J.

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Miller, J.

A146010; *P. v. Dancel*